UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, ex rel. ROBERT J. DYER, Plaintiff, v. RAYTHEON COMPANY, Defendant.	)	Civil Action No. 08-CV-10341-DPW

MEMORANDUM OF LAW IN SUPPORT OF RAYTHEON COMPANY'S MOTION FOR A PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, defendant Raytheon Company ("Raytheon") hereby moves for a protective order stating that plaintiff Robert J. Dyer ("Dyer" or "Plaintiff") is not entitled to discovery of "all documents" related to Raytheon's invoicing and billing for overhead charges submitted to the federal government for calendar years 2001 and 2002, and "all documents" relating to government contracts pertaining to one of Raytheon's business units for the same period.

As explained below, the requested invoices and contracts are, at most, marginally relevant to the disputed issues in this action. Producing these documents, however, would impose substantial and unreasonable burdens on Raytheon. For instance, the invoices requested by Plaintiff consist of thousands (if not tens of thousands) of ancient documents existing only in hard copy form, located at scattered storage facilities across the country, which would take at least six months to identify and collect. Given that the burdens of production significantly outweigh the relevance of the requested documents, Raytheon offered to provide invoice and contract information to Plaintiff in summary form, which would provide Plaintiff with the data he claims to need and would spare Raytheon the time and expense of producing the underlying documents. But Plaintiff refused to accept this proposed compromise, even though it would satisfy all of his legitimate needs for the information. Raytheon therefore requests a protective order, holding that Plaintiff is not entitled to the discovery he seeks and that Raytheon's proposed compromise is sufficient to satisfy its discovery obligations with respect to these issues.

BACKGROUND

The Claims and Defenses in the Lawsuit

In the Complaint, Plaintiff alleges that Raytheon violated the False Claims Act by improperly awarding incentive bonuses to certain personnel in its Command, Control, Communications and Information Systems ("C3I") business unit for 2001, and then billing those bonuses to the United States government as part of the indirect costs associated with Raytheon's government contracts. The primary issue in dispute is whether it was permissible for Raytheon to count a particular accounting item towards C3I's achievement of certain targets for purposes of determining the amount of the incentive bonuses. Raytheon contends that the inclusion of the accounting item was proper, and vigorously denies all allegations of misconduct. Plaintiff, however, asserts that inclusion of the accounting item towards C3I's targets violated the terms of Raytheon's working capital incentive program and the Federal Acquisition Regulation ("FAR"), and therefore resulted in the submission of a false claim to the government for the year 2001.

Plaintiff's Document Requests

Despite the relatively narrow scope of the dispute, Plaintiff has requested the production of two extraordinarily broad categories of documents (among many other things).[1] First,

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[1] In this Motion, Raytheon seeks protection from five overbroad, unduly burdensome, and marginally relevant requests for production, which, as discussed below, can be broken down into two broad categories: requests relating to invoices and billing for 2001 and 2002 (Requests No. 33, 34, and 35) and requests relating to government contracts for the same period (Requests No. 31 and 36). These two categories of requests are

Plaintiff seeks "[a]ll documents concerning and/or relating in any way to all invoices, billing, claims for payment, and charges reflecting overhead charges submitted by Raytheon to the United States Government for payment for years 2001 and 2002."[2] Second, Plaintiff seeks "[a]ll documents concerning and/or relating in any way to Government Contracts in effect relating to Raytheon's Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002."[3] Notably, Plaintiff's own initial disclosures estimate that there are approximately 30,000 relevant invoices, based on an estimate of 3,500 relevant contracts.[4]

Plaintiff argues that these documents are relevant and discoverable because *each invoice* that billed the government for a portion of the incentive bonuses at issue supposedly constitutes a separate "false claim" for purposes of the False Claims Act, each of which would in turn trigger a mandatory civil penalty of $5,500 to $11,000 per claim.[5] Importantly, Plaintiff does *not* allege that any statement appearing on the face of the invoices was in any way false or fraudulent. Nor does Plaintiff allege that any of the invoices submitted by Raytheon charged for work that was not performed, or that was performed improperly, or that Raytheon violated the terms of any

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discussed below, along with Raytheon's reasons for seeking a protective order and the legal authority supporting Raytheon's position. To comply with the requirements of Local Rule 37.1, each request for production and the response thereto is included in full in Appendix A of this Memorandum. Given the overlap in Plaintiff's requests, and given that Raytheon's arguments below are applicable to each of the challenged requests, this Memorandum analyzes these requests collectively, instead of individually listing each request and then repeating, in turn, the same reasons for granting the protective order for each of the requests.

2 Declaration of Brian C. Devine ("Devine Decl.") Ex. 2, Request No. 33; *see also id.* at Request No. 34 ("All documents concerning and/or relating in any way to all invoices, billing, claims for payment and charges reflecting . . . overhead charges submitted by Raytheon to the United States Government relating in any way to the Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002."), Request No. 35 ("All documents concerning and/or relating in any way to all invoices, billing, claims for payment and charges reflecting . . . specific overhead charges submitted by Raytheon to the United States Government concerning incentive bonus payments made to employees in the Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002 as part of the Raytheon Working Capital Incentive Program.").

3 Devine Decl. Ex. 2, Request No. 31; *see also id.* at Request No. 36.

4 Devine Decl. Ex. 1, at (iii)(3). Plaintiff has not yet produced the material that he identified as the source of this information. *Cf.* Devine Decl. Ex. 3, at Response No. 24 and No. 26.

5 *See* Devine Decl. Ex. 1, at (iii)(3).

government contract. Rather, Plaintiff merely asserts that because the challenged bonuses technically constituted a tiny fraction of the indirect costs that Raytheon charged to the government on any particular invoice, each such invoice is a separate "false claim."

Raytheon's Indirect Cost Submission Process

The actual process Raytheon used to submit its indirect costs to the government for contracts performed in 2001, however—including the challenged bonuses—demonstrates that Plaintiff's position is totally untenable. As a government contractor, Raytheon contracts with the government for specific work, and then invoices the government regularly for each contract. *See generally* Declaration of John G. Panetta ("Panetta Decl.") ¶¶ 3–4. There are two principal kinds of contracts: fixed-price contracts and cost-type contracts. For fixed-price contracts, the price paid by the government is negotiated in advance and normally remains the same regardless of the actual costs incurred by Raytheon during performance. For cost-type contracts, the price paid by the government is determined in part by Raytheon's costs, and so Raytheon's actual allowable costs are passed along to the government. *See* Panetta Decl. ¶¶ 5–7.

The bonuses challenged by Plaintiff were included in the *indirect costs* that Raytheon billed to the government pursuant to its cost-type contracts. *Indirect costs* include items such as overhead, fringe benefits, and general and administrative expenses, which are attributable to all work performed by Raytheon. *Direct costs* include costs specifically attributable to a particular contract, such as materials or labor assigned directly to the particular work called for by a contract. *See* Panetta Decl. ¶¶ 8–10.

Raytheon's process for billing the government for its indirect costs demonstrates the overbreadth of Plaintiff's discovery demands:

- At the beginning of each calendar year, the government establishes an indirect cost billing rate, which Raytheon uses for its invoices during the calendar year.

That billing rate, which is based on cost data from prior years, serves as a placeholder so that billing may occur even though the actual indirect costs for the current year (which are incurred throughout that year) are not yet known.

- Raytheon invoices the government at that interim government-established rate during the calendar year, subject to further adjustments by the government throughout the year. Specifically, each invoice contains a single line item for "costs incurred," and indirect costs make up a portion of that line item. Because this line item is determined using the interim rate set by the government at the beginning of the year, these charges are not based on the actual indirect costs incurred by Raytheon during that year.

- The invoices themselves are generated on a standard government form, in a highly regularized and systematized fashion, because even slight variations from the approved form can prevent Raytheon from collecting on the invoice. The invoices do *not* contain any express certification that the amounts invoiced comply with any particular rules or regulations.

- Roughly six months *after* the close of the calendar year, Raytheon calculates its *actual* indirect costs for that prior year and submits them to the government in one or more "indirect cost submissions" for each relevant business. For the year 2001, Raytheon's indirect cost submissions were provided to the government in June 2002. These submissions contain an express certification that "All costs included in this proposal . . . are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements . . . ; and [t]his proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements."

- Thereafter, the government audits the indirect cost submissions, engaging in extensive communications with Raytheon and rigorously auditing many of the costs making up the overall indirect cost figure.

- After the audit is complete, a process that requires significant time and effort following the indirect cost submissions, Raytheon and the government negotiate and agree on final indirect cost rates for that year, memorialized in a final rate agreement.

- After the final rate agreement, Raytheon invoices the government again, based upon the final agreed-upon indirect cost billing rates, to reflect the marginal rate difference for each outstanding open contract. In other words, once the final indirect cost rate is established, Raytheon issues an adjusted invoice for each open contract to "true up" what it had already billed the government (via the prior placeholder invoices) with the result of the final rate agreement.

See Panetta Decl. ¶¶ 4, 11–22; Devine Decl. Ex. 7 (representative sample of invoices).

In light of this process for billing indirect costs to the government, it is clear that the individual invoices do not reflect the actual "claim" for payment made by Raytheon. Rather, the "claim" is made in the *indirect cost submission*. The indirect cost submission is the mechanism by which Raytheon requests payment for its actual indirect costs—including the incentive bonuses at issue here—and certifies that the claimed costs are allowable under FAR.[6] The invoices, on the other hand, are automatically-generated bills that simply apply the indirect cost rate agreed to or established by the government across all open contracts.[7]

Raytheon's Proposed Compromise

Even if Plaintiff's theory was correct—and it is not—Plaintiff's only interest in the requested invoices and contracts would be for counting purposes, *i.e.*, to determine the *number* of alleged "false claims" for purposes of calculating the potential civil penalties under the False Claims Act. Thus, in response to Plaintiff's demand, Raytheon offered a counterproposal during the parties' discovery conference, in an effort to reasonably accommodate Plaintiff's asserted need for the requested information.

More specifically, Raytheon offered to produce a summary list in spreadsheet format, identifying each invoice that billed the government for a portion of the indirect costs associated with the challenged incentive bonuses paid to C3I personnel for the year 2001 (including the date of the invoice, the amount invoiced, and the relevant contract), together with a representative sample of actual invoices. *See* Devine Decl. Ex. 4, at 22–23. This would permit Plaintiff to

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6 Raytheon has already agreed to produce C3I's indirect cost submissions for 2001.

7 Moreover, given the iterative nature of the indirect cost billing process, it is actually *impossible* that the bonuses challenged by Plaintiff—which were not finalized or paid until early 2002—could have been included in the placeholder indirect cost rates used for invoices issued during the 2001 calendar year. Instead, because the challenged bonuses were not submitted to the government until C3I's indirect cost submissions in June 2002, no invoices could even possibly be characterized as "false" unless they were issued after that date—and even then, any allegation that an invoice was "false" would necessarily depend on an allegation that the billing rates proposed in the *indirect cost submission* were "false," further confirming that the indirect cost submission is the relevant "claim" for purposes of the False Claims Act.

determine the number of invoices submitted, to identify the contracts under which they were submitted, and to examine the content of the standard invoice forms—namely, the only aspects of the invoices and contracts that are even potentially relevant to Plaintiff's claims—without imposing on Raytheon the unjustified and unreasonable burden of assembling and producing tens of thousands of paper copy invoices scattered at storage locations across the country.

Plaintiff refused this proposed compromise, however, and continues to demand that all invoices and contracts (and all documents "relating in any way" to those invoices and contracts) be produced, including documents related to business units other than C3I, indirect costs other than the challenged bonuses, and for the year 2002—none of which are even remotely relevant to the issues in this case. *See* Devine Decl. Ex. 6, at 2. As such, Raytheon was left with no choice but to move for a protective order limiting the scope of Plaintiff's requests.

ARGUMENT

Under Rule 26, "the court *must* limit the frequency or extent of discovery . . . if it determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit." FED. R. CIV. P. 26(b)(2)(C) (emphasis added). Here, the burden and expense of Plaintiff's proposed discovery concerning invoices and contracts substantially outweighs the limited relevance of the requested materials. Thus, a protective order is necessary and appropriate.

I. The Requested Invoices and Contracts are of Limited Relevance.

As explained above, the invoices and contracts requested by Plaintiff are at best marginally relevant to this case. As an initial matter, Plaintiff's requests are overbroad on their face. By its own express terms, the Complaint only alleges false claims in connection with $1.165 million of working capital incentive bonus payments made to certain C3I personnel for the year 2001. *See* Compl. ¶¶ 56, 60, 96. Thus, to the extent Plaintiff is requesting documents related to the year 2002 (Request Nos. 31, 33, 34, 35, 36), indirect costs other than the challenged bonuses (Request No. 33, 34), invoices related to business units other than C3I (Request No. 33), or contracts that were not billed for the challenged bonuses (Request No. 31), such requests cannot possibly be relevant to Plaintiff's claims.

More importantly, Plaintiff's contention that each individual invoice constituted a separate alleged "false claim" is wrong. The central allegation in this case concerns a *single* decision to count an accounting item towards C3I's working capital targets for purposes of determining incentive bonuses, which resulted in a *single* set of bonus payments to employees of a *single* business unit with respect to a *single* year. These bonus payments were then submitted to the government as part of a *single* indirect cost submission for each component of C3I, which requested payment for the challenged bonuses as indirect costs and certified that the claimed costs were allowable under FAR. Given that Plaintiff's claims are premised on the allegation that the challenged bonuses were *not* allowable under FAR, *see* Compl. ¶¶ 80–97, this certification—and the indirect cost submission more broadly—is clearly the "claim" that lies at the heart of this case.

The invoices, on the other hand, did not constitute a new request, proposal, or "claim" in any way. Instead, the invoices merely implemented and applied the indirect cost billing rate to each open contract *after it was already established or agreed-upon by the government*. Once the indirect cost billing rate was established or agreed to by the government, all the automatically-generated invoices did—across thousands of contracts and invoices, which was solely a product of the indirect cost billing process—was to calculate and bill the specific amount of *approved* indirect costs attributable to each relevant contract. Thus, any given invoice reflected only a tiny fraction of the total indirect costs incurred by C3I, and the challenged bonuses comprised only a tiny fraction of *that* tiny fraction. The "claim" for these indirect costs by Raytheon, however, was the indirect cost submission; the fact that the approved indirect costs were later spread across numerous invoices and contracts for billing purposes did not multiply the number of claims thousands of times over.

Moreover, there was nothing in the requested invoices that could be characterized as "false" in light of Plaintiff's allegations in the Complaint. Plaintiff does not allege that the invoices billed for indirect costs that were not actually incurred by Raytheon. The invoices did not contain a separate certification that the indirect costs reflected on each invoice complied with FAR. (Nor would one expect the invoices to contain such a certification, since that certification was made in the indirect cost submission and the invoices merely implemented a billing rate already approved by the government.) In fact, for the placeholder invoices issued during the calendar year 2001, it was *impossible* for the invoices to constitute a "false claim" for the challenged bonuses, because the bonuses were not even approved or paid out until early 2002. Similarly, for "true-up" invoices related to 2001 indirect costs that were not issued until after the June 2002 indirect cost submissions, the only conceivable allegation of falsity would be that those invoices implemented an indirect cost billing rate that the government approved on the basis of Raytheon's representations in the indirect cost submission. That, of course, only further confirms that the indirect cost submission is the relevant "claim" for purposes of the False Claims Act.

Courts applying the False Claims Act in analogous contexts have concluded that a flood of bills, invoicing for costs assessed in a single over-arching representation to the government, do not each constitute separate "claims" for purposes of calculating civil penalties under the False Claims Act. In *Hays v. Hoffman*, 325 F.3d 982 (8th Cir. 2003), for instance, the Eighth

Circuit categorically rejected the argument that the inclusion of a fraudulent, one-time cost in a Medicaid cost report transformed each interim request for payment based on that cost report into a discrete false "claim" under the False Claims Act. The court acknowledged that, because Medicaid cost reports are (like here) used to calculate payment rates, "a one-time expense . . . may be reimbursed over hundreds or many thousands of claims for reimbursement for services provided to individual residents." *Id.* at 993. Nevertheless, the court found a "fundamental problem" with the idea of treating each affected reimbursement claim as a separate False Claims Act violation—namely, it would run afoul of the Supreme Court's instruction that, in assessing False Claims Act penalties, the focus must be on "the specific conduct of the person from whom the Government seeks to collect the statutory fine." *Id.* (quoting *United States v. Bornstein*, 423 U.S. 303, 313 (1976)). Because it was the billing practice established by the government that resulted in the fraudulent cost being diffused across multiple claims for reimbursement, not the actions of the defendant, the court held that only the initial false cost report was recognizable as a false claim under the False Claims Act.

Other courts have reached similar results. In *Visiting Nurse Association of Brooklyn v. Thompson*, 378 F. Supp. 2d 75 (E.D.N.Y. 2004), the government argued that each request for interim payment made over a two-year period by two home health care providers constituted a separate and discrete false claim because the providers had knowingly and fraudulently inflated the reimbursement rate for home health care visits to Medicare patients by systematically over-reporting the time spent with non-Medicare patients. The court disagreed, finding that it was "too great a stretch to say that the reimbursement claim forms were false or fraudulent because, and only because, the Providers' cost reports were false." *Id.* at 99. Likewise, in *United States ex rel. Debra Hockett, M.D. v. Columbia/HCA Healthcare Corp.*, 498 F. Supp. 2d 25 (D.D.C.

2007), the court rejected the relator's argument that an artificially inflated reimbursement rate transformed each affected interim request for payment into a distinct false claim. As the court explained, even under "broadest reading" of the False Claims Act, "the fraudulent demand . . . is the false cost report, not the individual [requests for payment]." *Id.* at 71. Like the Eighth Circuit, these courts recognized that "[i]t is [the] conduct of the [defendant], not the disposition of the claims by the government, that creates FCA liability." *Hays*, 325 F.3d at 993 (second alteration in the original) (quoting *United States v. Krizek*, 111 F.3d 934, 940 (D.C. Cir. 1997)).

The same is true in this case. As in *Hays*, *Visiting Nurse Association*, and *Hockett*, the invoices requested by Plaintiff here have nothing to do with the specific conduct that Plaintiff is challenging, which is a single decision to include an accounting item towards the achievement of working capital targets for the purpose of determining bonus compensation (and the subsequent inclusion of the challenged bonuses in C3I's indirect cost submissions to the government). Rather, the thousands of invoices automatically generated after every adjustment to the indirect cost billing rate is merely an artifact of the realities of government contracting and the billing practices established by the government. Thus, for the same reasons expressed in *Hays*, *Visiting Nurse Association*, and *Hockett*, the invoices are not the relevant "claims" for purposes of analyzing potential civil penalties under the False Claims Act.[8]

In short, neither the invoices nor the contracts requested by Plaintiff are truly relevant to Plaintiff's claims as they are alleged in the Complaint. Plaintiff therefore fails to meet the standard required to obtain discovery on these subjects, and a protective order is warranted. *See* FED. R. CIV. P. 26(b)(1) (scope of permissible discovery limited to "any matter . . . that is relevant to the claim or defense of any party"); *Blount Int'l, Ltd. v. Schuylkill Energy Res. Inc.*, 124 F.R.D. 523, 527 (D. Mass. 1989) (granting protective order where discovery requests went beyond the claims and defenses in the case).

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[8] Indeed, treating each separate invoice as constituting a separate claim for penalty purposes under these circumstances would violate the prohibition of the Excessive Fines Clause, as the resulting calculation of potential penalties would be grossly disproportional to the $1.165 million in actual damages alleged in the Complaint. *See, e.g.*, *Hays*, 325 F.3d at 992 ("FCA penalties are punitive in nature and therefore fall within the reach of the Excessive Fines Clause."); *see also United States v. Cabrera-Diaz*, 106 F. Supp. 2d 234, 242 (D.P.R. 2000) (citing *United States v. Halper*, 490 U.S. 435 (1989)) (refusing to apply civil False Claims Act penalties and deeming them "excessive" when the low range of penalties would yield a ratio of 5:1 compared to actual damages); *United States ex rel. Stearns v. Lane*, No. 2:08-cv-175, 2010 WL 3702538, at *4 (D. Vt. Sept. 15, 2010) (concluding that a False Claims Act penalty "between 82 and 162 times the government's actual damages . . . is grossly disproportional" and assessing no penalties).

II. Plaintiff's Requests are Unduly Burdensome, and Raytheon's Proposed Compromise Would Satisfy Plaintiff's Asserted Need for the Requested Information.

Finally, even if the Court were to credit at this stage Plaintiff's theory of how to quantify the alleged false claims (*i.e.*, that each invoice is to be counted as a separate allegedly false or fraudulent claim for payment corresponding to another potential civil penalty), all Plaintiff requires is discovery sufficient to ascertain the *number* of relevant invoices and contracts—which Raytheon has offered to provide, along with representative samples of the standard form invoices to permit Plaintiff to review their contents.

Raytheon's proposed compromise is reasonable and sensible in light of the borderline relevance of the material sought by Plaintiff, but it is essential when weighed against the substantial burdens imposed by Plaintiff's request. The invoices requested by Plaintiff number at least in the thousands, and probably in the tens of thousands. They exist only in hard copy form, and they are scattered at various third-party document storages sites across the country. Retrieving the invoices would require reviewing indices for tens of thousands of boxes, which are organized by the accounting systems used at the time rather than the particular business unit generating the invoice. *See* Panetta Decl. ¶ 26.

The difficulty of retrieving the requested invoices is compounded by the fact that, at the time they were created more than ten years ago, Raytheon was using four different accounting systems across its C3I business unit—only one of which is still in use, and the rest of which have been replaced by a single successor system that does not include the requested invoices. *See* Panetta Decl. ¶¶ 24–25. Identifying the correct responsive invoices would involve resource-intensive manual sorting. Raytheon estimates that it would require at least six months of effort to collect the invoices. *See* Panetta Decl. ¶¶ 26–27.

Plaintiff's supposed need to ascertain the number of invoices could be entirely satisfied by Raytheon's proposed compromise. While the invoices themselves are available only in hard copy form, the summary information that Raytheon proposes to provide is available electronically and is thus far more accessible. Specifically, in lieu of collecting the actual invoices, Raytheon would undertake to:

- Provide an electronic spreadsheet listing all invoices that billed the government for a portion of the indirect costs associated with the challenged bonus payments paid to C3I personnel for the year 2001;

- Provide a representative (but reasonably limited) sample of actual invoices sent to the government during the relevant time period, to permit Plaintiff to review a subset of the actual standard form invoices; and

- Provide an electronic spreadsheet identifying which C3I government contracts were billed with respect to the challenged bonus payments for the year 2001.

This proposal would satisfy any legitimate needs that Plaintiff could possibly assert for the requested information, while protecting Raytheon from the unreasonable and unnecessary burdens of collecting and producing all of the actual invoices. Plaintiff cannot demonstrate that anything more than this is required, particularly when the only issue even potentially relevant to his case—on the most generous reading of Plaintiff's most generous civil penalty theory—is the *number* of invoices and not their content.

CONCLUSION

Plaintiff seeks extraordinarily broad discovery on matters with only the barest relation to the allegations in his Complaint. Collecting the requested documents would impose a severely disproportionate burden on Raytheon, and Raytheon has offered a reasonable counterproposal in the spirit of accommodation. In light of Plaintiff's refusal, Raytheon requests that this Court enter a protective order prohibiting the discovery sought by Plaintiff, and permitting only the limited, reasonable accommodation described herein.

Respectfully submitted,

RAYTHEON COMPANY

By its attorneys,

/s/ James C. Rehnquist______________

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APPENDIX A

Plaintiff's Request No. 31

All documents concerning and/or relating in any way to Government Contracts in effect relating to Raytheon's Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002.

Raytheon's Response No. 31

Raytheon specifically objects to this Request to the extent that it is overly broad and unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Raytheon further objects to this Request insofar as it seeks documents protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, and the general objections set forth above, Raytheon states that it will produce documents sufficient to show which C3I contracts were billed to the government with respect to the working capital incentive program bonus payments for 2001 that are at issue in the Verified Amended Complaint.

Pursuant to the parties' meet-and-confer discussions in accordance with Local Rule 37.1, Raytheon further states that it intends to file a motion for a protective order limiting the scope of this request.

Raytheon's Position on Request No. 31

For all of the reasons set forth in the body of this memorandum, *see supra*, at 7-13, Raytheon contends that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FED. R. CIV. P. 26(b)(2)(C); *see also* FED. R. CIV. P. 26(c).

Plaintiff's Request No. 33

All documents concerning and/or relating in any way to all invoices, billing, claims for payment, and charges reflecting overhead charges submitted by Raytheon to the United States Government for payment for years 2001 and 2002 including itemization by contract line item.

Raytheon's Response No. 33

Raytheon specifically objects to this Request to the extent that it is overly broad and unduly burdensome, needlessly duplicative with other requests set forth herein, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Raytheon further objects to this Request insofar as it seeks documents protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, and the general objections set forth above, Raytheon states that it will produce documents sufficient to summarize the invoices submitted to the government that reflected overhead charges in connection with the working capital incentive bonus payments to

C3I personnel for 2001 (indicating the date, amount, and associated contract for each invoice), as well samples of the types of invoices.

Pursuant to the parties' meet-and-confer discussions in accordance with Local Rule 37.1, Raytheon further states that it intends to file a motion for a protective order limiting the scope of this request.

Raytheon's Position on Request No. 33

For all of the reasons set forth in the body of this memorandum, *see supra*, at 7-13, Raytheon contends that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FED. R. CIV. P. 26(b)(2)(C); *see also* FED. R. CIV. P. 26(c).

Plaintiff's Request No. 34

All documents concerning and/or relating in any way to all invoices, billing, claims for payment and charges reflecting and identifying by line items, overhead charges submitted by Raytheon to the United States Government relating in any way to the Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002.

Raytheon's Response No. 34

Raytheon specifically objects to this Request to the extent that it is overly broad and unduly burdensome, needlessly duplicative with other requests set forth herein, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Raytheon further objects to this Request insofar as it seeks documents protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, and the general objections set forth above, Raytheon refers to its response to Request No. 33.

Pursuant to the parties' meet-and-confer discussions in accordance with Local Rule 37.1, Raytheon further states that it intends to file a motion for a protective order limiting the scope of this request.

Raytheon's Position on Request No. 34

For all of the reasons set forth in the body of this memorandum, *see supra*, at 7-13, Raytheon contends that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FED. R. CIV. P. 26(b)(2)(C); *see also* FED. R. CIV. P. 26(c).

Plaintiff's Request No. 35

All documents concerning and/or relating in any way to all invoices, billing, claims for payment and charges reflecting and identifying by line item specific overhead charges submitted by Raytheon to the United States Government concerning incentive bonus payments made to employees in the Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002 as part of the Raytheon Working Capital Incentive Program.

Raytheon's Response No. 35

Raytheon specifically objects to this Request to the extent that it is overly broad and unduly burdensome, needlessly duplicative with other requests set forth herein, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Raytheon further objects to this Request insofar as it seeks documents protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, and the general objections set forth above, Raytheon refers to its response to Request No. 33.

Pursuant to the parties' meet-and-confer discussions in accordance with Local Rule 37.1, Raytheon further states that it intends to file a motion for a protective order limiting the scope of this request.

Raytheon's Position on Request No. 35

For all of the reasons set forth in the body of this memorandum, *see supra*, at 7-13, Raytheon contends that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FED. R. CIV. P. 26(b)(2)(C); *see also* FED. R. CIV. P. 26(c).

Plaintiff's Request No. 36

All documents concerning and/or relating in any way to Government Contracts in which invoices, billing, claims for payment and charges were submitted by Raytheon to the United States Government as part of overhead charges in said Government Contracts which included or related to in any way incentive bonus payments made to employees in the Command, Control, Communications and Information Systems Business Unit for years 2001 and 2002 as part of the Raytheon Working Capital Incentive Program.

Raytheon's Response No. 36

Raytheon specifically objects to this Request to the extent that it is overly broad and unduly burdensome, needlessly duplicative with other requests set forth herein, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Raytheon further objects to this Request insofar as it seeks documents protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, and the general objections set forth above, Raytheon refers to its response to Request No. 33.

Pursuant to the parties' meet-and-confer discussions in accordance with Local Rule 37.1, Raytheon further states that it intends to file a motion for a protective order limiting the scope of this request.

Raytheon's Position on Request No. 36

For all of the reasons set forth in the body of this memorandum, *see supra*, at 7-13, Raytheon contends that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FED. R. CIV. P. 26(b)(2)(C); *see also* FED. R. CIV. P. 26(c).

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 29, 2012.

/s/ James C. Rehnquist______________